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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/051,821 | 01/17/2002 | Tom Balamucki | 60,446-184; 01ZFM009/010, | 1202 |

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EXAMINER

KRAMER, DEVON C

ART UNIT

PAPER NUMBER

3683

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,821

Applicant(s)

BALAMUCKI ET AL.

Examiner

Devon C Kramer

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1) The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The claims in the application as amended recite, "a third location relative to said pivot, said third location different from said first location in three different dimensions". There is no support for this terminology in the specification.

Please note that page 6, paragraph 29 does not describe this limitation.

Claim Rejections - 35 USC § 112

2) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3) Claims 1-11 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 21 cite, "a third location relative to said pivot, said third location different from said first location in three different dimensions". It is unclear what applicant means by "dimensions". Applicant describes different "axis" in the specification.

Claim Rejections - 35 USC § 102

4) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5) Claims 1-6, 8-11 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bair (5758543).

In reference to claims 1 and 21, Bair provides a transmission assembly comprising: a transmission (16) having a member movable about a pivot (28) between a plurality of gear positions; a shift lever (31) operatively connected to the pivot for manipulating the member, the shift lever having a first center of mass at a first location relative to the pivot; and a counterbalance (52) operatively connected to the shift lever and having a second center of mass at a second location relative to the pivot different than the first location, thus producing a total center of mass for the shift lever located between the first location and the second location at a third location relative to the pivot, the third location different from the first location in three different dimensions. The positioning of the third location is all relative to how a person looks at the device.

In reference to claims 2, 4 and 6, Bair provides a transmission assembly where the first location comprises a first horizontal location and a first vertical location and the second location comprises a second horizontal location and a second vertical location wherein the total center of mass is located between the first horizontal location and the second horizontal location and between the first vertical location and the second vertical location.

In reference to claim 3, Bair provides a transmission assembly where the total center of mass is located horizontally and vertically closer to the pivot than the first horizontal location or the first vertical location.

In reference to claim 8, Bair provides a transmission assembly including a housing (32) supporting the pivot wherein the counterbalance is located at least partially outside of the housing. Please note that any element can be considered a housing.

In reference to claim 9, Bair provides a transmission assembly including a housing supporting the pivot wherein the pivot is located at least partially inside of the housing. (28)

In reference to claim 10, Bair provides a transmission assembly wherein the first center of mass generates a first moment urging the member in a first direction out of one of the gear positions and the second center of mass generates a second moment in a second direction opposite the first direction to maintain the member in a desired gear position.

In reference to claim 11, Bair provides a transmission assembly wherein a predetermined resistance level maintains the member in the desired gear position and the first moment is greater than the predetermined resistance level and the sum of the first and second moments is less than the predetermined resistance level. This feature is inherent in Bair because one wants to prevent inadvertent shifting and at the same time would like to shift with ease when a gear change is necessary.

6) Claims 1, 7-9 and 21 rejected under 35 U.S.C. 102(b) as being anticipated by Onoguchi et al (JP 3134367).

In reference to claims 1 and 21, Onoguchi et al provides a transmission assembly comprising: a transmission (12) having a member movable about a pivot (11a) between a plurality of gear positions; a shift lever (16) operatively connected to the pivot for manipulating the member, the shift lever having a first center of mass at a first location relative to the pivot; and a counterbalance (15) operatively connected to the shift lever and having a second center of mass at a second location relative to the pivot different than the first location, thus producing a total center of mass for the shift lever located between the first location and the second location at a third location relative to the pivot, the third location different from the first location in three different dimensions. The positioning of the third location is all relative to how a person looks at the device.

In reference to claim 7, Onoguchi et al provides an arrangement where the counter balance comprises an isolator (14) including a counterbalance mass (18) and a resilient connection (14) between the counterbalance mass and the shift lever reducing vibration of the shift lever during operation.

In reference to claim 8, Onoguchi et al provides a transmission assembly including a housing (15) supporting the pivot wherein the counterbalance is located at least partially outside of the housing. Please note that any element can be considered a housing.

In reference to claim 9, Onoguchi et al provides a transmission assembly including a housing supporting the pivot wherein the pivot is located at least partially inside of the housing. (box near 11a)

Conclusion

7) Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 703-305-0839. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers

Application/Control Number: 10/051,821

Page 7

Art Unit: 3683

for the organization where this application or proceeding is assigned are 703-308-3519 for regular communications and 703-308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

DK
September 10, 2003

CHRISTOPHER P. SCHWARTZ
PRIMARY EXAMINER
